

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et al.,

Defendants.

Civ. No. 04-11136-GAO

**PLAINTIFF FEDERAL TRADE COMMISSION'S OPPOSITION TO THE MOTION OF
DEFENDANTS DIRECT MARKETING CONCEPTS, INC., ITV DIRECT, INC.,
DONALD W. BARRETT, AND ROBERT MAIHOS TO CONTINUE HEARING**

The Federal Trade Commission respectfully submits this Opposition to the Motion filed by Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., Donald W. Barrett, and Robert Maihos to continue the hearing currently scheduled for September 20, 2005 on the Commission's Motion for a Modification of the June 23, 2004 Preliminary Injunction as to Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald W. Barrett and Request for Expedited Treatment. Specifically, the Commission notes the following.

First, the Defendants fail to note in their motion whether, consistent with Local Rule 7.1, they conferred with the Commission in an effort to work out an accommodation. Presumably, that is because since the Defendants first raised the issue of a scheduling conflict with the Commission on August 11, 2005, the Commission has repeatedly stated its willingness to have the hearing moved to an earlier date, but not – in light of the ongoing consumer injury resulting

from the Defendants' conduct – to have the hearing delayed by more than a few days.¹

Indeed, counsel for the Defendants stated specifically that they appreciated the Commission's cooperation in a telephone message left with Commission staff on Friday, August, 19, 2005. In that message, Christopher Robertson of the law firm of Seyfarth Shaw indicated that he had left several messages with the Court asking whether the hearing could be pushed back to September 26-28, in accordance with the Commission's agreement, and intended to follow up with the Court on Monday, August 22. Instead, on August 23, with no notice to the Commission, the Defendants moved for a continuance.

Second, and more important, as clearly set out in the Motion for Leave to File Supplemental Memorandum in Support of Plaintiff Federal Trade Commission's Motion for a Modification of the June 23, 2004 Preliminary Injunction as to Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald W. Barrett and Request for Expedited Treatment, which is being filed simultaneously herewith, the urgent need for a receiver is demonstrated by, among other things, the Defendants' release of a new infomercial for a dietary supplement that is claimed to prevent, treat, and cure arthritis – in direct violation of this Court's June 23, 2004 Preliminary Injunction. Simply stated, further delay of the hearing on the Commission's motion will cause even more consumer injury.

¹ The Commission initially informed the Defendants' counsel that it would agree to move the hearing forward to any day between September 13 and September 16. When the Defendants indicated that they also had scheduling conflicts that week, the Commission stated that it would be amenable to a rescheduling during the week of September 6, 2005 or, if that was not possible in light of the Court's calendar, to push the hearing back to September 26-28.

Respectfully submitted,



DANIEL KAUFMAN

KIAL S. YOUNG (BBO # 633515)

EDWARD GLENNON

Federal Trade Commission

600 Pennsylvania Avenue, NW; Suite NJ-3212

Washington, DC 20580

(202) 326-2675, -3126 (voice); (202) 326-3259 (fax)

dkaufman@ftc.gov or eglennon@ftc.gov

ATTORNEYS FOR PLAINTIFF

DATE: August 24, 2005

CERTIFICATE OF SERVICE

My name is Edward Glennon and I am an attorney with Federal Trade Commission. On August 24, 2005, copies of the Plaintiff Federal Trade Commission's Opposition to the Motion of Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., Donald W. Barrett and Robert Maihos to Continue Hearing were served via Federal Express as follows:

Becky V. Christensen
O'Connor Christensen & McLaughlin LLP
1920 Main St., Suite 150
Irvine, CA 92614

(for Michael Howell, Greg Geremesz, Health Solutions, LLC, Alejandro Guerrero and Health Solutions, Inc)

Dustin F. Hecker
Posternak Blankstein & Lund LLP
The Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199-8004

(for Michael Howell, Greg Geremesz, Health Solutions, LLC, Alejandro Guerrero and Health Solutions, Inc)

Peter Brooks
Seyfarth Shaw, LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210

(for Direct Marketing Concepts, Inc., ITV Direct, Inc., Donald W. Barrett, and Robert Maihos)

Joseph Ryan
Lyne, Woodworth & Evarts LLP
600 Atlantic Avenue
Boston, MA 02210

(for Triad ML Marketing, Inc., King Media, Inc., Allen Stern, Lisa Stern, and Steven Ritchey)

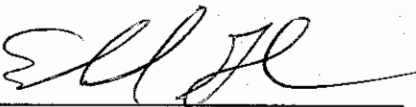
Sage International, Inc.
Attention: Molly Wheeler
1135 Terminal Way, Suite 209
Reno, NV 89502

(for BP International, Inc.)

Brad Keene, Esq.
Keene & Gizzi
220 Broadway, Suite 402
Lynnfield, MA 01940
Facsimile: (781) 346-6355

(for BP International, Inc.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this August 24, 2005 in Washington, D.C.



Edward Glennon